

**REMARKS**

The undersigned notes the Request for Continued Examination (RCE) Transmittal filed concurrently herewith. This RCE Transmittal requests that the Amendment After Final Rejection filed on August 6, 2003, refused entry in the Advisory Action mailed September 5, 2003, be entered as the necessary Submission under 37 CFR § 1.114.

As additional amendments, in this Supplementing Submission Under 37 CFR § 1.114, Applicants are adding new claims 23-28 to the application. New claims 23 and 24, dependent respectively on claims 9 and 23, further define the high productivity of the three-sided automatic filling-packaging machine, consistent with the description in the paragraph bridging pages 1 and 2 and in the second full paragraph on page 8 of Applicant's specification. Claim 25, also dependent on claim 9, further defines how the packaging is performed, using the three-sided automatic filling-packaging machine, consistent with the description in the second full paragraph on page 8 of Applicants' specification. Claims 26-28 respectively recite subject matter expressly set forth in claims 17, 23 and 24, but are dependent respectively on claims 25, 26 and 27.

Applicants respectfully traverse the conclusion by the Examiner in the first paragraph of the Advisory Action mailed September 5, 2003, that the newly proposed amendments to independent claim 9, as set forth in the Amendment After Final Rejection filed August 6, 2003, raised an issue of new matter. In connection therewith, attention is respectfully directed to the second full paragraph on page 8 of Applicants' specification, describing the three-sided seal automatic filling-packaging machine of rotary-filling type which can be used for the packaging according to the present

invention. Note particularly the following description at page 8, lines 21-24 of

Applicants' specification:

“The machines of this type can produce square packaged products having three heat-sealed sides and one crease side in a high productivity of several hundreds to 1,000 or more packages per minute.

It is emphasized that the high productivity can be 1000 or more packages per minute.

It is respectfully submitted that this provides clear support for the recitation of a high productivity “of at least several hundred packages per minute” as in claim 9.

Furthermore, attention is respectfully directed to newly added claims 23, 24, 27 and 28, further defining this high productivity. As discussed previously with respect to specific descriptions in Applicants' specification, the specific recitations in claims 23, 24, 27 and 28 have clear support in Applicants' disclosure as originally filed; and in view of the more specific recitations in these claims with respect to the level of the high productivity, are further supported by the disclosure in the original specification of the above-identified application, and, moreover, do not constitute new matter.

Applicants rely on their arguments set forth in the Amendment After Final Rejection filed August 6, 2003, as to patentable distinctions between the presently claimed subject matter and the teachings of the applied references. Applicants respectfully submit that following additional arguments, providing further distinctions between the presently claimed subject matter and the teachings of the applied prior art,

and responsive to arguments made by the Examiner in the Advisory Action mailed September 5, 2003.

Initially, to be especially noted is the problem addressed by Applicants, of amounts of oxygen-absorbing composition, and particularly iron powder thereof, bouncing up toward the opening of the bag and, e.g., scattering outside the bag and at the sealing location of the bag, due to the action of falling. Note, for example, the paragraph bridging pages 1 and 2 of Applicants' specification.

The present Applicants have made extensive researches on the relationship between the scattered amount and particle size of the iron powder, and as a result thereof, have found that through use of a specific size of the iron powder, the problem of bouncing-up (scattering) can be avoided. Note the paragraph bridging pages 2 and 3 of Applicants' specification. Applicants have further found that by having an amount of iron powder attached on the outer surface of the oxygen-absorbing package to be  $0.5 \text{ mg/m}^2$  or less with respect to the surface area of the oxygen-absorbing packaging, adverse effects due to unsightliness of the iron powder and/or mixing of the iron powder with the material sought to be protected can be avoided. It is respectfully submitted that the teachings of the applied references do not disclose, nor have suggested, the importance of a maximum amount of fine iron powder passing through a 200-mesh standard sieve, so as to avoid problems in connection with bouncing-up (scattering) of the iron powder, the problem of bouncing-up (scattering) being more serious in connection with high-productivity machines, or better results achieved when the maximum amount or less of iron powder occurs on the external surface of the

package, or other aspects of the present invention as discussed in the Amendment After Final Rejection filed August 6, 2003.

It must be emphasized that none of the references discloses a maximum amount or less of iron powder attached to an outer surface of the oxygen-absorbing package, and advantages achieved thereby as described in the foregoing and as discussed in Applicants' specification. It is respectfully submitted that at least this aspect of the present invention would have neither been disclosed nor would have been suggested by the teachings of the applied prior art.

The Examiner relies on Otsuka, et al. as disclosing a three-side-sealing method. However, it is respectfully submitted that the teachings of this reference, alone or in combination with the teachings of the other applied references, including McKedy, do not disclose nor would have suggested the high productivity and in particular the greater problems arising when using such high speed filling; and since these references do not even disclose the problem addressed by Applicants, would have neither disclosed nor would have suggested the solution to such problem as in the present claims, of utilizing the recited size of granular iron powder which avoids the undesired bounce-up (scattering), while still using relatively fine powder achieving advantageous oxygen absorption. In this regard, note that, as described in Applicants' original disclosure, it is also desired that the iron powder not be too coarse. See, for example, claim 20. In particular, Applicants have found a specific particle size range, and amount, for the iron powder, avoiding scattering while providing satisfactory oxygen absorption, even in high speed productivity using the three-sided automatic filling-packaging machine of rotary filling type; it is respectfully submitted that the

applied references do not disclose, nor would have suggested, the recited range and amounts, much less advantages thereof, as in the present Amendment.

Applicants respectfully traverse the conclusion by the Examiner that McKedy does not teach away from removing fine iron powder passing through a 200 mesh standard sieve. It is emphasized that McKedy discloses that the iron can be of the size between the 50 mesh and 325 mesh, most preferably about 200 mesh; and on page 25, lines 18-23, McKedy discloses that generally the finer the particulate iron which is used, the speedier will be the oxygen absorption, and, 325 mesh iron and above is preferred from a theoretical viewpoint. This patent document goes on to disclose that the fineness may be limited by the use of a machinery which is utilized to fabricate the package or labels. This patent document does not set forth a basis for limiting the fineness by the use of the machinery which is utilized. It is respectfully submitted that the teachings of McKedy as a whole, all of which must be considered under the requirements of 35 USC §103, teaches away from the iron powder wherein only a relatively small amount has a relatively small particle size, and advantages thereof as in the present invention.

The contention by the Examiner that the proposed modification of McKedy does not change the principle of operation of the invention of McKedy is noted. However, the question under 35 USC §103 is not whether a proposed modification or combination changes the principle of operation of the teachings of the primary reference, but rather whether the combined teachings of the references suggest the proposed modification. Particularly in view of the teachings of McKedy as a whole of using fine powder, it is respectfully submitted that the teachings of this reference, even

in combination with the teachings of the other applied references, would have taught away from use of powder having relatively minimal fine powder and maximal amount of powder not passing through a 200 mesh standard sieve, and advantages thereof as in the present Amendment.

Moreover, it is respectfully submitted that Cerbo merely discloses a technique for separating ferrous particles from crushed siliceous slag and for providing successive size gradations of the siliceous material, (not size gradations of the ferrous particles). Note the Abstract of Cerbo. Thus, taking the teachings of Cerbo as a whole, it is respectfully submitted that the teachings of this reference provide nothing to the teachings of McKedy and of Otsuka, with respect to the presently claimed subject matter.

However, even assuming, arguendo, that Cerbo discloses providing size gradations of the ferrous particles, and even assuming that the teachings of Cerbo were from analogous art, the combined teachings of the applied references do not disclose, nor would have suggested, the specific particle distribution of the iron powder of the composition used in the presently claimed process, and advantages thereof, as discussed in the foregoing. In particular, it is respectfully submitted that even assuming, arguendo, that Cerbo disclosed providing successive size gradations of the ferrous particles, and discloses gradations at 200 mesh U.S. standard and 325 mesh U.S. standard, the disclosure of this reference, even in combination with the teachings of the other applied references, would have neither disclosed nor would have suggested the specific particulate sizes in the present claims, especially in view of the

teachings of McKedy of using 325 mesh iron and the specific disclosure in Cerbo of a size gradation at 325 mesh.

Applicants maintain their position that the teachings of Cerbo are non-analogous to the teachings of McKedy and Otsuka, et al. Applicants agree with the Examiner that where a prior art reference is reasonably pertinent to the particular problem with which Applicants are concerned, such a reference has been held to be analogous. However, it is respectfully submitted that the Examiner has misstated the problem with which Applicants are concerned, in concluding that Cerbo is analogous art. That is, it is respectfully submitted that Applicants are concerned with the problem of bounce-up (scattering) of particulate during filling of the package, and have found a source of this problem; moreover, Applicants have found a solution to this problem of bounce-up (scattering), by using particulate of specific size. It is emphasized that the problem addressed by Applicants is a problem of bounce-up (scattering), not of separating different size particles as alleged by the Examiner. Properly stating the problem addressed by Applicants, of the bounce-up (scattering), it can be seen that Cerbo, disclosing separating different size particles of siliceous material, is non-analogous art in connection with the present invention, as well as in connection with McKedy and Otsuka, et al.

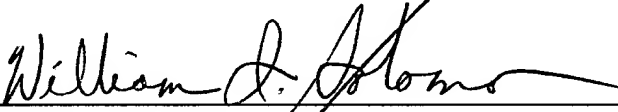
In view of the foregoing comments and amendments, as well as in view of the comments and amendments in the Amendment After Final Rejection filed August 6, 2003; and, moreover, in view of the concurrently filed Request for Continued Examination (RCE) Transmittal, entry of the present amendments and of the amendments in the Amendment After Final Rejection filed August 6, 2003, and

reconsideration and allowance of all claims remaining in the application, are respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 CFR § 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to the Deposit Account No. 01-2135 (Case No. 396.39350X00), and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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